

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAMES K. SONG, et al.,
Plaintiffs,
v.
AARON DRENBERG,
Defendant.

Case No. 18-CV-06283-LHK

**ORDER REFERRING MATTER TO
STANDING COMMITTEE ON
PROFESSIONAL CONDUCT;
DENYING REQUEST FOR
MONETARY SANCTIONS**

Re: Dkt. No. 114

Before the Court is the motion for sanctions filed by Defendant Aaron Drenberg (“Defendant”) against Plaintiffs’ counsel, Adam Engel (“Engel”), ECF No. 114 (“Mot.”). Engel filed an opposition, ECF No. 119 (“Opp’n”), and Defendant filed a reply, ECF No. 122 (“Reply”). Having considered the submissions of the parties, the relevant law, and the record in this case, the Court REFERS the matter to the Court’s Standing Committee on Professional Conduct and DENIES Defendant’s request for monetary sanctions.

I. UNAUTHORIZED PRACTICE OF LAW

On July 17, 2019, when Engle was ineligible to practice law in California, Engel filed on behalf of Plaintiffs an Opposition to Defendant Drenberg’s Partial Motion to Dismiss (“MTD”)

Opposition”), ECF No. 56. *See* Mot. at 2. Engel has acknowledged that he filed the MTD Opposition while he was suspended from the practice of law in California by the California State Bar. *See* ECF No. 88-1 (“Engel Decl.”) ¶¶ 8, 9. Engel was apparently suspended for noncompliance with California’s Mandatory Continuing Legal Education Requirements. *See* Mot. at 2; ECF No. 77, Ex. A. By filing the MTD Opposition while suspended from the practice of law, Engel engaged in the unauthorized practice of law.

In addition, the complaint in this case was filed on October 12, 2018, ECF No. 1, prior to Engel’s admission to practice in this District on October 15, 2018. *See* ECF No. 72 at 2 (Defendants’ previous motion to strike raising this issue). Engel previously claimed that he had been admitted to practice in this District on October 10, 2018. Engel Decl. ¶¶ 2–3. However, the District’s Attorney Bar Membership Status Lookup Tool states that Engel was admitted to practice in this District on October 15, 2018. Although the parties did not raise this conduct in the instant motion, if proven, initiating the instant case prior to admission to practice in this District would constitute a violation of Civil Local Rule 11-1(a) (requiring attorneys to be admitted in this Court before practicing).

II. REQUESTED RELIEF

In the instant motion, Defendant requests the following relief:

(1) that the Court “notify the Chief Judge of the United States District Court for the Northern District of California that Mr. Engel has filed papers with this Court while he was ineligible to practice law,” pursuant to Civil Local Rule 11-6(a)(2) and Civil Local Rule 11-1(g)(1)(D); and
(2) sanctions, in the form of reasonable attorney’s fees and costs incurred in the preparation and filing of a reply to the Opposition to Defendant Drenberg’s Partial Motion to Dismiss, ECF No. 59.

Mot. at 4–5. The Court considers each request for relief in turn.

A. Relief Pursuant to Civil Local Rules

First, with respect to Defendant’s request for relief under the Civil Local Rules, the Court

1 agrees that Engel's unauthorized practice of law warrants further escalation pursuant to the
2 mechanisms set forth by the Local Rules.

3 Specifically, Civil Local Rule 11-7(a) requires an attorney admitted to practice in this
4 Court who is "suspended, disbarred or placed on disciplinary probation by any court . . . [to] give
5 notice to the Clerk and the Clerk of the Bankruptcy Court in writing within 14 days of such
6 event." Engel does not claim that he ever complied with this provision, and Engel's other filings
7 with the Court suggest that he never did so. *See* ECF No. 88-1 ("Engel Decl.") (claiming that,
8 because the "Chief District Judge has not issued any [order to show cause]," Engel does "not
9 believe [he] was ever listed as not eligible to practice in this Court").

10 The Civil Local Rules further authorize this Court to refer the matter to either the Court's
11 Standing Committee on Professional Conduct or the Chief District Judge. For example, Civil
12 Local Rule 11-8 provides:

13 A person who exercises, or pretends to be entitled to exercise, any of the privileges
14 of membership in the bar of this Court, when that person is not entitled to exercise
such membership privileges, may be referred to the Standing Committee in addition
to any action authorized by applicable law.

15 Similarly, Civil Local Rule 11-6(a) allows the Court to refer the matter to either the Court's
16 Standing Committee on Professional Conduct or the Chief District Judge "in the event that a Judge
17 has cause to believe that an attorney has engaged in unprofessional conduct."

18 As the Court previously found above, Engel indisputably engaged in the unauthorized
19 practice of law in the instant case by filing the Opposition to Defendant Drenberg's Partial Motion
20 to Dismiss while Engel was suspended from the practice of law in California by the California
21 State Bar. Similarly, Engel may have violated Civil Local Rule 11-1(a) by filing the complaint in
22 the instant case before being admitted to practice in this District. Accordingly, as authorized by
23 Civil Local Rules 11-6(a) and 11-8, the Court hereby REFERS the matter to the Standing
24 Committee on Professional Conduct.

25 **B. Monetary Sanctions Pursuant to 28 U.S.C. § 1927 and the Court's Inherent Authority**

26 Second, with respect to Defendant's request for monetary sanctions, the Court finds that

1 Defendant has failed to substantiate his request for monetary sanctions. As stated above,
2 Defendant seeks compensation for reasonable attorney's fees and costs incurred to prepare and file
3 the reply to Engel's Opposition to Defendant Drenberg's Partial Motion to Dismiss, which Engel
4 filed while unauthorized to practice law. Defendant's motion for monetary sanctions is based
5 upon 28 U.S.C. § 1927 and the Court's inherent authority. *See Mot.* at 4–5; *Reply* at 4–5.
6 Crucially, for the Court to grant sanctions under either mechanism, the Court must make a finding
7 of bad faith. *See Goodyear Tire & Rubber v. Haeger*, 137 S. Ct. 1178, 1186 (2017) (holding that
8 monetary sanctions pursuant to the Court's inherent authority must be calibrated to "the bad-faith
9 acts on which it is based"); *In re Keegan Mgmt. Co., Sec. Litig.*, 78 F.3d 431, 436 (9th Cir. 1996)
10 (holding that "section 1927 'must be supported by a finding of subjective bad faith.'").

11 Based on the record before the Court, the Court can not find that Plaintiff acted in bad
12 faith. As an initial matter, Defendant failed to even argue in his motion for sanctions that Plaintiff
13 acted in bad faith. Mot. at 4–5. Defendant belatedly raised the issue of bad faith for the first time
14 on reply. Reply at 2–4. Regardless, based on the current record, the Court cannot say that Engel
15 acted in bad faith. The record before the Court does not demonstrate that Engel acted intentionally
16 or to harass Defendant by filing the Opposition to Defendant Drenberg's Partial Motion to
17 Dismiss. Furthermore, Defendant does not argue that Engel's Opposition to Defendant
18 Drenberg's Partial Motion to Dismiss was frivolous. Reply at 3. Instead, Defendant asserts that
19 Engel's brief was "without merit." Reply at 3. Because Defendant has failed to establish bad
20 faith, the Court may not issue monetary sanctions under either 28 U.S.C. § 1927 or the Court's
21 inherent authority.

22 III. CONCLUSION

23 Accordingly, the Court REFERS this matter to the Court's Standing Committee on
24 Professional Conduct with respect to (1) Engel's filing of the Opposition to Defendant Drenberg's
25 Partial Motion to Dismiss, ECF No. 56, while ineligible to practice law in California; and (2)
26 Engel's filing of the complaint, ECF No. 1, prior to admission to practice in the Northern District
27

1 of California. The Court DENIES Defendant's request for monetary sanctions.

2 **IT IS SO ORDERED.**

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4 Dated: March 27, 2020

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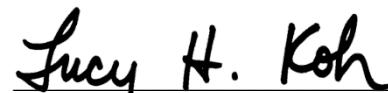
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LUCY H. KOH
United States District Judge